

In the Matter of Merchant Mariner's Document 67483 and all other  
Seaman Documents

Issued to: Albert Begelman

DECISION OF COMMANDANT  
UNITED STATES COAST GUARD

1366

Albert Begelman

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 23 February 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for four months upon finding him guilty of negligence. The specification found proved alleges that while serving as the Pilot on board the Norwegian MV FRANCISVILLE under authority of the license above described, on or about 29 July 1959, Appellant operated this vessel at an immoderate speed under conditions of fog and restricted visibility, thereby contributing to a collision between the FRANCISVILLE and the United States SS MATHEW LUCKENBACH.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification.

Both parties introduced in evidence the testimony of witnesses and various exhibits. Appellant testified that an 11 knot speed seemed reasonable under the circumstances since the powered FRANCISVILLE was highly maneuverable and could have been stopped in half the distance of visibility; Appellant saw buoy 3 HC to port at a range of about 400 yards approximately 4 minutes before the collision and changed course to 065 degrees true; he sighted the LUCKENBACH at 300 to 500 yards coming out of the patchy fog 60 degrees on the starboard bow; no signal was heard from the LUCKENBACH until the one blast of her whistle when she was sighted and her course was about 300 degrees true; Appellant ordered the danger signal to be sounded, engines full astern and rudder hard to port; he then ordered hard right rudder in an attempt to swing the stern away from the LUCKENBACH but she struck the FRANCISVILLE in the vicinity of the engine room at an angle of 90 degrees; Appellant estimated the speed of the other ship to have been between 7 and 9 knots at the time of the collision.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of four months.

#### FINDINGS OF FACT

On 29 July 1959, Appellant was serving as the Pilot on board the Norwegian MV FRANCISVILLE and acting under authority of his license when this ship collided with the United States SS MATHEW LUCKENBACH approximately a mile northeast of buoy 3 HC near the southwesterly entrance to Buzzards Bay, Massachusetts, in waters governed by the Inland Rules of the Road. The collision occurred at 0552 (FRANCISVILLE time) in a patchy fog which limited the visibility to approximately 500 yards. The bow of the LUCKENBACH penetrated the starboard side of the FRANCISVILLE at an angle of ninety degrees in the vicinity of the engine room. There were no personnel injuries or deaths and no material failure caused the casualty. The property damage to the two ships amounted to about three-quarters of a million dollars.

The FRANCISVILLE is a twin-screw diesel freighter, 468 feet in length and 6087 gross tons. She was on a northeasterly course en route from Long Island City, New York to Boston Massachusetts via the Cape Cod Canal with general cargo. The ship was equipped with radar which was in good condition and in operation at all pertinent times.

The MATHEW LUCKENBACH is a steam turbine freighter, 469 feet in length and 7870 gross tons. She departed from Boston bound for Philadelphia with general cargo on board. Fog was encountered before and after the ship passed through the Cape Cod Canal and proceeded down Buzzards Bay toward buoy 3 buoy 3 HC. The FRANCISVILLE was picked up on the radar bearing on the port bow about eight miles distant in the vicinity of Buzzards Bay Light Vessel. The LUCKENBACH was on course 245 degrees true. About ten minutes before the collision speed was reduced to slow ahead. The course was twice changed five degrees to the right about five minutes later. Thereafter, the engines were alternately stopped or going astern. Signals were sounded and heard coming from the FRANCISVILLE. The LUCKENBACH'S rudder was hard right when she struck the other ship amidships. At this time, the LUCKENBACH was moving forward heading about 295 degrees true and her bow continued to swing to the right after the impact.

Appellant boarded the FRANCISVILLE at Long Island City prior to her departure on 28 July. He obtained this employment through the Maritime Coast Pilots' Association primarily because he has a Federal license with an endorsement as a Cape Cod Canal pilot.

Appellant has master's license with pilotage endorsements for numerous areas including the Cape Cod Canal and approaches, Buzzards Bay, and other waters in this vicinity. He would not have been hired if he had not had a Federal license with an endorsement as Cape Cod Canal pilot.

Appellant was put in charge of conning the vessel at all times after she passed south of Block Island at about 0330 on 29 July. The Master and watch officer remained on the bridge. The wind was light and the sea was calm. Fog signals were being sounded in the patchy fog. The ship's speed over the ground continued at approximately 15 knots until less than two minutes before the collision. No pip representing the LUCKENBACH or any other moving object was observed on the radarscope at the two ships approached each other on reciprocal courses. Possibly, this was due to the fact that king post, booms and one mast were forward of the radar antenna. Sunrise was at 0535.

The FRANCISVILLE was on course 040 degrees true when she passed Buzzards Bay Light Vessel one-half mile abeam to starboard at 0535. The Light Vessel was located by radar but could not be seen due to fog. After sighting buoy 3 HC at distance of 400 to 500 yards and passing it abeam to port at approximately 0548, course was changed to 065 degrees true. This buoy is used as a turning point by vessel entering and leaving Buzzards Bay. Some two minutes later, the LUCKENBACH was sighted at a distance of between 300 and 500 yards coming out of the fog on the starboard bow of the FRANCISVILLE. Appellant immediately gave orders for the engines to be stopped and for hard left rudder. The danger signal was sounded. There was confusing exchange of subsequent signals before the two ships collided less than two minutes after the LUCKENBACH was sighted from the FRANCISVILLE. The latter was heading 026 degrees true when the collision occurred and all power was lost on the FRANCISVILLE.

The LUCKENBACH proceeded under her own power to Philadelphia. The FRANCISVILLE was towed to New York City.

Appellant has no prior record of offenses involving navigation. He has been going to sea for more than 30 years and has been serving as a pilot for at least 20 years.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

POINT I. The Coast Guard lacks jurisdiction. The ship was not in state or federal compulsory pilotage waters when the collision

occurred before reaching the Cape Cod Canal. Therefore, Appellant was not acting under the authority of his pilot's license as required by 46 U.S.C. 239(g). Since this statute is penal in nature a strict construction is required.

POINT II. The decision is not supported by proper evidence. The testimony of the Government witnesses from the LUCKENBACH contains material changes from the testimony given by the same witnesses at the Coast Guard investigation.

POINT III. Appellant operated the FRANCISVILLE at moderate speed. The most reliable estimate as to the distance of visibility was given as one-half mile by the pilot on the ship following ten minutes of the LUCKENBACH. This estimate was checked by radar. Since tests conducted after the collision showed that the FRANCISVILLE could stop from a speed of 14.7 knots in 485 yards, she could have stopped within one-half the distance of visibility. No traffic was observed on the radarscope.

POINT IV. The Examiner erred in apply in the Pennsylvania Rule (presumption that a statutory violation is at least a contributory cause of collision) in this administrative proceeding.

POINT V. Even assuming the FRANCISVILLE's speed was immoderate, it was a "condition" and not a "cause" which contributed to the collision. The sole and proximate cause of the collision was the unchecked swing of the LUCKENBACH to her starboard, to effect a port-to-port passing, before the FRANCISVILLE came into sight.

In conclusion, it is submitted that the decision should be reversed; the charge and specification should be dismissed.

APPEARANCE:       Dow and Stonebridge of New York City by  
                    Wilbur E. Dow, Jr., Esquire, of Counsel

#### OPINION

It is my opinion that , under the existing conditions of visibility,the FRANCISVILLE was moving at an excessive speed during the time leading up to the collision. This amounted to negligence, without regard to whether the speed of the ship constituted an "antecedent condition" which only made the collision possible or a "cause" which contributed to the collision. The basic criterion to be applied in these proceedings when the charge is negligence is whether there was imprudent conduct rather than statutory or contributory fault.Commandants's Appeal Decisions Nos. 586, 728, 730, 868,946 and 989.

POINT I. It has consistently been held by the Commandant that this

is a remedial statute rather than a penal one and, therefore, it should be liberally construed. The reason for this interpretation is that the primary purpose of these proceedings is to protect the public interest by promoting the safety of life and property at sea, and is not to punish seamen for offenses committed. See Commandant's Appeal Decision No. 1131.

Appellant was employed primarily because he had an endorsement on his license as Cape Cod Canal pilot. Appellant was also qualified as pilot in the waters where the collision occurred in the approaches to the Cape Cod Canal. Since the Master of the foreign vessel relied on Appellant's navigation because of these qualifications, it is reasonable to conclude that, under the liberal construction given to a remedial statute, Appellant was acting under the authority of his document within the meaning of 46 U.S.C 239(g).

POINT II. This testimony is primarily concerning the actions of the LUCKENBACH which have no bearing on whether or not Appellant was guilty of negligence. The purpose of this proceeding is not to fix blame on the LUCKENBACH or to exonerate her from fault. Commandant's Appeal Decision No 1106.

POINT III. The pilot of the ship astern of the LUCKENBACH testified that he did not arrive on the scene until at least ten minutes after the collision (R. 388). In view of this lapse of time and the patchy condition of the fog, I think that the testimony of the Master and Appellant, both of whom saw the LUCKENBACH come into sight, constitutes the most reliable evidence as to the distance of visibility in the vicinity of the collision at the time it occurred.

The Master of the FRANCISVILLE testified that he first saw the other ship at a distance of "about three ship lengths" (Exh. 1(a), p. a.9). In terms of his ship, this was about 468 yards. Appellant stated that he saw the LUCKENBACH when she was between 300 and 500 yards away (R. 204, 239, 334). Appellant also testified that a buoy 3 HC (about one mile and four minutes before the collision), the fog "would be thick and then let up" (R. 236). Based on the testimony of these witnesses, I have found that the visibility was about 500 yards.

With respect to the speed of the FRANCISVILLE, the evidence shows that the ship averaged 14.7 knots over the ground for approximately an hour before arriving in the vicinity of the Buzzards Bay Light Vessel at 0535. Knowing that the Light Vessel could not be seen at a distance of one-half mile and the likelihood of meeting vessels outward bound from the Cape Cod Canal, Appellant was on notice that he should have made some reduction in speed.

During the next 13 or 14 minutes while approaching the turning buoy 3 HC, the ship averaged about 16 knots according to Appellant's own calculations made at the hearing(R. 323, 333,).

Accepting the stopping distance of the FRANCISVILLE as 485 yards at 14.7 knots, it is obvious that she could not have stopped in half the distance of visibility which was 500 yards. Therefore, according to this test as to what constitutes moderate speed, Appellant was guilty of negligence. This is a reasonable test to apply here because of the probability that ships approaching each other would be on approximately reciprocal courses.

It is my opinion that Appellant did not exercise the reasonable degree of judgement expected of a prudent pilot under the same circumstances. Appellant believed that the visibility was limited to approximately 500 yards (R. 239); he could easily have estimated the speed of the ship up to the Light Vessel; and he had no definite information concerning the stopping ability of the ship. Judging the issue of due care from Appellant's personal point of view and considering his knowledge, or lack of knowledge, concerning these three factors which he knew were important, it is apparent that Appellant continued at a speed which he could not reasonably have determined was a safe speed in this area where traffic was to be expected.

POINTS IV and V. "Without consideration of the Pennsylvania Rule which is a rule of law (The AAKRE (C.C.A. 2, 1941), 122 F. 2d 469, 476)8, it is my opinion that there is a substantial evidence to prove that the immoderate speed of the FRANCISVILLE was a "cause" which contributed to the collision. As stated at the beginning of this opinion, the basic offense is immoderate speed in fog. The additional words "thereby contributing to a collision between the FRANCISVILLE and the SS MATHEW LUCKENBACH" allege an ultimate fact which is to be proved by natural reasoning from the evidence. Although I agree with the view that the burden of proof by substantial evidence remains on the Government throughout these proceedings, the burden of proof is not altered by reasonable inferences (presumptions of fact) which place the burden of going forward with the evidence on the opposing parties. See United States v. Hines (C.A. 2, 1958) 256 F. 2d 561. And it has been held that liability, based on a casual connection between a negligent act and the resulting injury when the consequence of the negligence is that which a prudent person could reasonably have anticipated, applies in cases where there have been negligent acts by violations or safety statutes which must be liberally construed and do not come within the category of penal statutes. Eberhart v. Abshire (C.C.A. 7, 1946), 158 F. 2d 24.

In this case, I think that it is a reasonable inference, based

on all the surrounding facts and circumstances, to conclude that there was some relationship between the excessive speed and the collision. This causal connection is established predominantly by the facts that the speed of the FRANCISVILLE placed her in the danger zone (beyond one-half the distance of visibility ahead) where the collision occurred and that she had not stopped when the two ships came together.

It is my opinion that the most logical conclusion or inference, based on experience and probabilities, is that the established fact of the immoderate speed of the FRANCISVILLE did, to some extent, contribute to the casualty. As stated in Appeal No. 586, this is not an attempt to forecast the outcome of civil litigation resulting from the collision.

Due to the delay in rendering this decision and since Appellant has maintained a record unblemished by any prior navigation offense during his entire career as a pilot for at least twenty years, the period of suspension will be reduced and Appellant placed on probation.

#### ORDER

The order of the Examiner dated at New York, New York, on 23 February 1961, is modified to provide for a suspension of two (2) months on six (6) months probation.

As so MODIFIED, the order is AFFIRMED.

E. J. Roland  
Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 7th day of February 1963.